REMARKS

The Final Office Action dated October 12, 2006 contained a final rejection of claims 1-3, 5-31, 33 and 38-47. The Applicant has amended claims 1, 2, 9, 10, 11, 18, 24, 25 and 38. Claims 1-20 are in the case. Please consider the present amendment with the attached Request for Continued Examination (RCE) under 37 C.F.R. § 1.114. This amendment is in accordance with 37 C.F.R. § 1.114. Reexamination and reconsideration of the application, as amended, are requested.

Record is made of a telephonic interview with Examiner E. Unelus in January 2007 regarding the claims and the cited references. The Applicants' attorney proposed new claim language. The above amendments reflect the proposals made by the Applicants' attorney.

The Office Action rejected claims 1-3, 5-31, 33 and 38-47 under 35 U.S.C. § 102(b) as being anticipated by Konishi et al. (U.S. Patent Publication No. 2002/0003576).

The Applicants respectfully traverse this rejection based on the amendments to the claims and the arguments below.

The Applicants' have amended the independent claims to include determining a sustainable data transfer rate by transferring a test file containing a digital representation of video data between the data appliance and the external memory medium. In addition, claims 11 and 24 further include using an interim bit rate less than an initial bit rate by a predetermined amount if a data transfer error is detected after transferring the test file for a remainder of data transfer and/or subsequent data transfers. Also, after the bit rate has been decreased, the data transfer resumes until another data transfer error condition occurs or the data transfer is completed so that data transfers and bit rate adjustments repeat until no data error is detected during a transfer of the test file.

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In contrast, although the Examiner argued that Konishi et al. create a file index with thumbnails, this is very different from the Applicant's claimed invention which <u>sends a test file containing a digital representation of **video data**</u> to determine the sustainable data transfer rate between the data appliance and the memory medium. Namely, the thumbnails in Konishi et al. are instead for display purposes only and are **not** for determining the sustainable data transfer rate to allow an operational parameter to be appropriately selected, like the Applicants' claimed invention. The Applicants' invention allows a digital camera to automatically customize its use of memory cards that have different speeds without manual interaction.

Further, with regard to claims 11 and 24, Konishi et al. merely disclose "intra- or inter-frame encoding for a video signal input" (see Abstract, paragraph [00127] and FIG. 1 of Konishi et al.), but clearly do **not** disclose the Applicants' <u>using an interim bit rate</u> less than an initial bit rate by a predetermined amount <u>if a data transfer error is detected after transferring the test file</u> for a remainder of data transfer and/or subsequent data transfers. Moreover, unlike Konishi et al., the Applicants' claimed invention includes resuming the data transfer <u>after the bit rate has been decreased</u> and until <u>another data transfer error condition occurs</u> or the data transfer is completed so that <u>data transfers and bit rate adjustments **repeat** until no data error is detected</u> during a transfer of the test file.

Consequently, since Konishi et al. do not disclose the newly added claimed elements of the independent claims, Konishi et al. cannot anticipate the claims. Hence, the Applicants submit that the rejections under 35 U.S.C. 102 should be withdrawn.

With regard to the rejection of the dependent claims, because they depend from the above-argued respective independent claims, and they contain additional limitations that are patentably distinguishable over the cited references, these claims are also considered to be patentable (MPEP § 2143.03).

Thus, it is respectfully requested that all of the claims be allowed based on the amendments and arguments. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

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Additionally, in an effort to further the prosecution of the subject application, the Applicant

kindly **requests** the Examiner to telephone the Applicant's attorney at **(818) 885-1575**.

Please note that all mail correspondence should continue to be directed to:

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Respectfully submitted,
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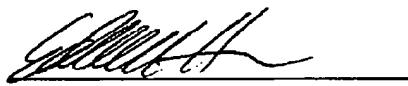
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